

HOUSE BILL NO. 367

INTRODUCED BY PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; ~~PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; PROVIDING THAT AN APPEAL FROM A JUSTICE'S COURT OF RECORD TO THE DISTRICT COURT IS ON THE RECORD AND NOT DE NOVO ONLY IF ALL THE PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD~~; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, ~~25-31-601~~, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, ~~and the~~ municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court ~~established as a~~ court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

1 **Section 3.** Section 3-6-204, MCA, is amended to read:

2 **"3-6-204. Disqualification -- judge pro tempore.** When a judge of a municipal court has been
3 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
4 as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
5 justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in
6 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
7 authority as the municipal court judge."
8

9 **Section 4.** Section 3-10-101, MCA, is amended to read:

10 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
11 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
12 of the state, which must be located at the county seat. The board of county commissioners shall designate the
13 number of justices in each justice's court.

14 (2) The board of county commissioners of each county of the state may establish:

15 (a) one additional justice's court located anywhere in the county; and

16 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
17 subsection (3).

18 (3) A city having a population of over 5,000 may, by resolution, request the board of county
19 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
20 board of county commissioners approves the request by resolution.

21 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
22 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
23 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
24 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
25 and for proportionate reimbursement for the use of facilities.

26 (5) A county may establish the justice's court as a court of record. If the justice's court is established
27 as a court of record, it must be known as a "justice's court established as a court of record" and,
28 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
29 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
30 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record

1 may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

2
3 **NEW SECTION. Section 5. Powers and duties of justice's court of record.** (1) Except as otherwise
4 provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in
5 matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace
6 may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

7 (2) The justice's court of record shall establish rules for appeal to district court. The rules are subject
8 to the supreme court's rulemaking and supervisory authority.

9
10 **Section 6.** Section 3-10-115, MCA, is amended to read:

11 **"3-10-115. Appeal to district court from justice's court established as court of record -- record**
12 **on appeal.** (1) A party may appeal to district court a judgment or order from a justice's court established as a
13 court of record. The appeal is confined to review of the record and questions of law, subject to the supreme
14 court's rulemaking and supervisory authority.

15 (2) The record on appeal to district court consists of an electronic recording or stenographic transcription
16 of a case tried, together with all papers filed in the action.

17 (3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the
18 proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from
19 which the appeal was taken.

20 (4) Unless the supreme court establishes rules for appeal from a justice's court established as a court
21 of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified
22 in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

23
24 **Section 7.** Section 3-10-116, MCA, is amended to read:

25 **"3-10-116. Disqualification of justice of peace for justice's court established as court of record**
26 **-- judge pro tempore.** When a justice of the peace for a justice's court established as a court of record has been
27 disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court
28 established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court
29 established as a court of record, a retired municipal court judge, or an attorney of the county in which the court
30 is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice

of the peace for the justice's court established as a court of record."

Section 8. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the course by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

~~(4) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in 3-10-117."~~

Section 9. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504.

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

~~Section 10. Section 25-31-601, MCA, is amended to read:~~

~~"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney, and Except in a justice's court of record, any person, except the constable by whom the summons or jury process was served, may act as attorney."~~

Section 10. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in 3-10-115 ~~IF ALL PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD.~~

Section 11. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

- (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;
- (d) notification of the existence of a plea agreement, 46-12-211;
- (e) disclosure and discovery motions, Title 46, chapter 15, part 3;
- (f) notice of reliance on certain defenses, 46-15-323;
- (g) notice of seeking persistent felony offender status, 46-13-108;
- (h) notice of other crimes, wrongs, or acts, 46-13-109;
- (i) motion to suppress, 46-13-301 and 46-13-302;
- (j) motion to dismiss, 46-13-401 and 46-13-402;
- (k) motion for change of place of trial, 46-13-203 through 46-13-205;
- (l) reasonableness of bail, Title 46, chapter 9; and
- (m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's ~~court~~ established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the

1 court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record
2 if the notice of appeal is not timely filed. The defendant may petition the district court to order the record
3 transmitted upon a showing of good cause for failure to timely file the notice of appeal.

4 (4) A defendant may appeal a justice's court, other than a justice's ~~court established as a~~ court of
5 record, or city court revocation of a suspended sentence to the district court. The district court judge shall
6 determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation
7 procedure.

8 (5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet
9 a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative
10 or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon
11 dismissal, the appealed judgment is reinstated and becomes the operative judgment."
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13 NEW SECTION. Section 13. Repealer. Section 3-10-117, MCA, is repealed.
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15 NEW SECTION. Section 14. Codification instruction. [Section 5] is intended to be codified as an
16 integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].
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18 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 2005.
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